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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,980	07/24/2003	Daniel Philpott	60130-1669; 02MRA0574	1701

26096 7590 10/12/2004

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EXAMINER

STORMER, RUSSELL D

ART UNIT	PAPER NUMBER
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3617

DATE MAILED: 10/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/625,980

Applicant(s)

PHILPOTT, DANIEL

Examiner

Russell D. Stormer

Art Unit

3617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-19 is/are allowed.
- 6) ☒ Claim(s) 1-5 and 9-12 is/are rejected.
- 7) ☒ Claim(s) 6-8, 13 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/24/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 2 and 3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In each of the claims, the brake assembly lacks antecedent basis.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 4, and 5 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Fry.

The first and second plates are shown at 15, the torque plates at 16, and the spindles 34 extend through openings in the torque plate 16. See especially figure 1.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3617

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2, 3, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fry in view of Pringle.

The axle assembly of Fry does not show a brake assembly.

Pringle teaches a suspension assembly comprising an axle assembly in which a spindle 32 is mounted to a plate or arm 30 and a wheel assembly is mounted on the spindle. The wheel assembly includes a brake assembly (unlabelled) as shown in figure 2. From this teaching it would have been obvious to provide a brake assembly with the wheel assembly which is to be mounted on the hub 33 of Fry, which is mounted to the spindle 34. The brake assembly would therefore be mounted to the torque plate 16 indirectly. This arrangement would allow the wheel and brake assemblies to be attached to the axle assembly as a single unit and thus simplify assembly.

7. Claims 10, 11, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fry in view of Pringle.

The references are applied and combined as set forth in paragraphs 4 and 6 above with respect to the first and second plates, the torque plates, and the mounting of the brake assembly. The references are further applied in that the method of fabricating the axle assembly would have been obvious in view of the construction of the assembly shown by Fry in figure 1.

Art Unit: 3617

Fry does not describe the torque plate 16 as being welded to the plate 15, but also does not show fasteners being used to join the members.

It would have been obvious to those of ordinary skill in the art to weld the torque plates 16 to the first and second plates 15 as welding is well-known in the axle art and the metal joining art. Since the connection is an angled connection, welding would be a suitable option for joining these members and would be more practical than using fasteners such as rivets or bolts, which generally need parallel surfaces to be most effective.

#### ***Allowable Subject Matter***

8. Claims 15-19 are allowable over the prior art of record.
9. Claims 6, 7, 8, 13, and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references show other tag axle assemblies.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Russell D. Stormer whose telephone number is (703)

Art Unit: 3617

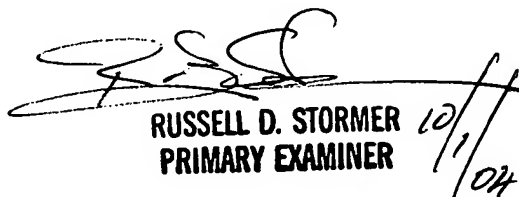
308-3768. The examiner can normally be reached on Monday through Friday, 9 AM to 4 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joe Morano can be reached on (703) 308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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10/1/04

  
RUSSELL D. STORMER  
PRIMARY EXAMINER 10/1/04